IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8259 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJESHBHAI MANHARBHAI POPAT

Versus

DISTRICT MAGISTRATE

Appearance:

MR YOGESH S LAKHANI for Petitioner

Mr S K Patel, AGP for Respondent No. 1, 4

Mrs P J Davawala for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 28/09/2000

ORAL JUDGEMENT

The petitioner has preferred this petition under Article 226 read with Articles 14, 19 21 and 22 of the Constitution of India challenging the order of detention

dated 29.6.2000 passed by the learned District Magistrate, Rajkot District in exercise of powers conferred on him by section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for the said Act) on various grounds.

2. The petitioner states that the order of detention is illegal inasmuch as the legible copies of the documents relied upon were not supplied to the petitioner and therefore, the petitioner was prevented from making effective representation against the aforesaid order of detention and thus his statutory right of making effective representation has been taken away and the same is in violation of principles of natural justice. The petitioner claims that the petitioner had a valuable right of making representation against his detention and since the petitioner was not in a position to avail of the statutory benefits, the detention cannot be sustained. The petitioner has, therefore, prayed that the present petition be allowed and the order of detention dated 29.6.2000 be quashed and set aside.

2. Rule was issued in this matter and in response to the service of rule, Mr S K Patel, learned AGP appeared for respondents No.1,2, and 4. He has submitted affidavit of Mr P R Shukla, Dy.Secretary Food Civil Supplies and Consumer Affairs Dept, Gandhinagar which is taken on record. Ms. P J Davawala, learned Addl.Standing Counsel appeared for respondent no.3-Union of India.

3. I have heard the learned Advocates for the parties and have perused the papers. Learned Advocate for the petitioner has contended that in the present case, there is total non-application of mind on the part of the detaining authority. For this purpose, he has referred to the detention order dated 29.6.2000 at page 12. He has relied upon paragraph 3 at page no.15 and states that the offence has been registered being C.R. No.179/2000 on 17.6.2000 in Jetpur City Police station against one Salimbhai Mohmadbhai. Barrels of blue kerosene and white kerosene were seized in the said matter. Therefore, there was clear reference to the aforesaid offence in para 3 at page 15 of the grounds of detention. He has then referred to para 4 of page 20. There it has been mentioned that the petitioner was indulging in the aforesaid activities of mixing control kerosene and free sale kerosene and thereby indulging in the aforesaid illegal activity. It is further mentioned at para 4 that it was not possible to prevent the

petitioner from carrying out the aforesaid activities since he used to get orders of bail from the court concerned and thereafter, he used to continue the said illegal activities. Learned Advocate for the petitioner has submitted that in the aforesaid offence referred to above along with Salimbhai Mohmadbhai, the petitioner was also arrested. He was co-accused in the same offence and he was arrested on 17.6.2000 along with Salimbhai. That he was presented before the JMFC concerned on 17.6.2000. That he had filed bail application on 18.6.2000 and he was ordered to be released on bail by the said court on 18.6.2000. That therefore, though the petitioner was actually involved in C.R. No.179/2000 along with Salimbhai, the detaining authority has simply considered name of Salimbhai and has not considered name of the petitioner and has not considered the fact that the petitioner was also involved in the aforesaid offence. It is relevant to consider that the aforesaid offence was registered on 17.6.2000 and bail application was granted on 18.6.2000 and the order of detention has been passed on 29.6.2000. There was a gap of 10 to 12 days between the aforesaid events. The aforesaid aspects of the case have not at all been referred to by the detaining authority while passing the aforesaid order. That would mean that the detaining authority did not take into account the aforesaid event altogether. That would further mean that there was total non-application of mind on the part of the Detaining authority in considering the aforesaid material and vital aspects of the case. This is clear case of non-application of mind regarding the facts and circumstances of the case apparent on the face of the record. This material was clearly available with the authority concerned and yet it has not been considered.

4. I am, therefore, of the view that the petitioner is right in arguing that the detaining authority has passed the order of detention of the petitioner without due application of mind. On this aspect of the case, learned AGP was requested to verify the position and after verifying the position, he agrees that the aforesaid fact is true. That the petitioner was also arrested on 17.6.2000 and he was bailed out on 18.6.2000. He also agrees that the offence in which the petitioner was involved is the same wherein Salimbhai was also involved. It is also an admitted position that the aforesaid offence is related to mixing of kerosene as aforesaid and that was the subject-matter of the order of detention against the petitioner. These facts are totally undisputable. Therefore, it is clear that the order has been passed by the detaining authority for

detaining the petitioner under section 3(2) of the said Act without application of mind. When the order has been passed without application of mind, it cannot be sustained. Therefore, further detention of the petitioner cannot be permitted.

5. In the result, this petition is allowed. The impugned order of detention passed on 29.6.2000 by the District Magistrate, Rajkot District is quashed and set aside. The detenu is ordered to be set at liberty forthwith if no longer required in any other case. Rule made absolute accordingly. No order as to costs.

28.9.2000 [D P Buch, J.]
msp.